

Hand-Delivered

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CASE NUMBER 1:23-CV-270

FILED
ASHEVILLE, NC

JAN 03 2024

U.S. DISTRICT COURT
W. DISTRICT OF N.C.

MACKENZIE ELAINE BROWN

Plaintiff

v.

HENDERSON COUNTY SHERIFF'S
OFFICE, et al.

Defendants

PLAINTIFF'S
AFFIRMATION IN
SUPPORT ~~OF~~ OF OPPOSITION
TO DEFENDANT'S
MOTION TO DISMISS

Mackenzie Elaine Brown affirms the following under penalty of perjury:

1. I am the Plaintiff in this action, and I respectfully submit this affirmation in opposition to the Motion to Dismiss by Defendants Susan N. Oates and Emily Greene Cowan, ^{which they} filed on the 1st of December, 2023.
2. Upon information and belief, the motion should be denied because of the totality of these reasons:
 - a. In view of the Statement of Facts on the following pages.
 - b. In view of the Memorandum of Law in Support of Plaintiff's Opposition to Defendant's Motion to Dismiss.

c. In view of Plaintiff's Complaint.

3. Plaintiff respectfully submits that the court should deny the Judicial Defendants' Motion to Dismiss.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: JANUARY 3, 2024

Mackenzie Elaine Brown

Mackenzie Elaine Brown,
Plaintiff & Pro Se Litigant
158 Haven Rd, East Flat
Rock, NC 28726
P: 828-642-0406
E: mackenzieb0897@gmail.com

STATEMENT OF FACTS

1. On October 1st 2021, Henderson County Sheriff's Office (HCSO) were willingly giving the public an open invitation for signage on a pink patrol car parked on display in front of their building, as part of their event. [Document 1, Page 9].
2. The vehicle was a regular Sheriff car that was wrapped in pink film that can be peeled off, and AdventHealth is who was responsible for funding the event and who paid for the cruiser to be wrapped. [Document 1, Page 11].
3. Around 12:30 p.m. on that day, BROWN showed up to Henderson County Magistrate's Office / Sheriff Department to file charges for assault against Dillion Branch. The assault incident had happened 4 days prior, on September 26, 2021, and BROWN was pregnant with Dillion's child during the assault. [Document 1, Page 9].
4. Once BROWN parked, she observed the pink sheriff's vehicle, and she noticed there were black Sharpies that HCSO provided laid out on it, and several indications of signage already made with the Sharpies on various parts of the car. [Document 1, Page 9].
5. Once inside the Magistrates Office, BROWN filled out a criminal complaint form against Dillion with on-duty Magistrate OATES. On the form, BROWN alleged she was 16 weeks pregnant with Dillion's baby, that he threatened to kill her and the baby, assaulted her by strangling her throat, squeezed her torso to keep her restrained, and came at her with an ax. BROWN took a picture of the criminal complaint form after she finished filling it out. [Document 1, Page 9]. Exhibit 1.
6. After submitting the form to OATES, BROWN left the Magistrates Office, and as she proceeded to walk back to her vehicle, she saw her friend writing on the pink vehicle. There were not any rules, regulations, directions, instructions, or clues posted

indicating what the public could, could not, should, or should not, write. [Document 1, Page 10].

7. As a result, BROWN (Plaintiff) wrote "12 SUX" on the midsection of the vehicle. Her signage took up a space no bigger than the palm of her hand. [Document 1, Page 10].
8. Once BROWN had left the premises, Deputy WARREN discovered the "12 SUX" signage on the pink vehicle. He immediately went to review the camera footage and linked the person who signed "12 SUX" to BROWN. Deputy WARREN and Deputy LINDSAY went before Magistrate OATES and took out a criminal process against Plaintiff for Injury to Personal Property, which effected a Warrant for her Arrest. Then they took pictures of the "12 SUX" signage. They "attempted to remove it and were unable to." They "had to use a piece of vinyl covering to conceal the spot on the car." [Document 1, Page 14].
9. About 1 hour later, after BROWN arrived back home, she heard knocking on her door, and when she opened it, she was yanked out of her doorway by Deputies WARREN and LANDERS. BROWN told them, "Take it easy, I am pregnant!" [Document 1, Page 10].
10. WARREN and LANDERS handcuffed her without telling her why, despite her many attempts to ask them why she was being arrested when she hadn't broken any laws. WARREN and LANDERS took pictures of BROWN standing handcuffed in front of the pink sheriff car, then shut her in the back of it, and then LANDERS drove her to jail in it. [Document 1, Page 10].
11. Upon arriving at Henderson County Detention Facility, BROWN was served with a Warrant for Arrest, issued by Magistrate OATES for Injury to Personal Property, who gave her a secured bond of \$2,000. [Document 1, Page 11].
12. The Warrant for Arrest stated that BROWN "unlawfully and willfully did wantonly injure personal property, HENDERSON COUNTY SHERIFF'S OFFICE PATROL VEHICLE, CAR NUMBER SH 208, the property of HENDERSON COUNTY SHERIFF'S OFFICE. The damage caused was in excess of \$200." [Document 16-2, Page 2].

13. OATES was the same Magistrate on duty a couple hours earlier, when BROWN had come to file assault charges against her abuser. [Document 1, Page 11].
14. BROWN was photographed, fingerprinted, and moved to a solitary cell. [Document 1, Page 11].
15. Eventually, BROWN bonded out the same day at 8:13 p.m.
16. On October 1, 2021, at 5:40 p.m., Public Information Officer DUNCAN made a post on HCSO's Facebook page humiliating BROWN in a false light about her arrest. The Facebook post had pictures of BROWN standing handcuffed in front of the pink vehicle, with an embarrassed look on her face. [Document 1, Page 12].
17. Based on this Facebook post, at least 20 other online news sources scraped the data from the Facebook post and rebroadcast the story, causing it to become highly publicized on a national level. [Document 1, Page 12].
18. BROWN'S family and friends contacted HCSO and requested that the Facebook post be removed but it was not removed. [Document 1, Page 13].
19. On March 24, 2022, there was a 'trial by judge' hearing at Henderson County Courthouse on the matter with COWAN presiding as the District Court Judge. [Document 1, Page 14].
20. During that court appearance, Deputies WARREN and LINDSAY gave testimonials on the witness stand. While answering the cross-examination questions that BROWN's Public Defender was asking WARREN and LINDSAY, it was acknowledged by both of them that HCSO was allowing the entire public community to add signage onto the pink vehicle for their event that day, and that there were no rules or regulations as to what could be written on it. [Document 1, Page 14].
21. Judge COWAN denied Plaintiff's Request for Dismissal, and instead convicted her of the Injury to Personal Property charge. BROWN believes COWAN did this "in effort to side

with Defendant WARREN and Defendant LINDSAY.” BROWN immediately appealed the conviction to Henderson County Superior Court. [Document 1, Page 14].

22. Eventually, on October 25, 2022, the charges against BROWN were dismissed by the District Attorney's Office for the reason of NISITP (Not In The States Interest To Prosecute). [Document 16-6, Page 2].
23. In April of 2022, approximately 7 months after her October 1st visit to the Magistrate's Office when BROWN had filled out the criminal complaint form for assault against Dillion in front of Magistrate OATES, BROWN returned to the Magistrate's Office to inquire whether the “warrant for assault” had been served yet on Dillion. [Document 1, Page 14].
24. BROWN was told by on-duty Magistrate Jernigan, that the criminal complaint form she filled out on October 1st, 2021, “was never filed,” and that she was unable to locate any record related to the assault charges against Dillion whatsoever. Magistrate Jernigan informed Brown that OATES would have been unable to process the Injury to Personal Property arrest on the same day that BROWN filed assault charges against her abuser, because that would have made OATES a ‘conflict of interest.’ Magistrate Jernigan instructed BROWN to come back when Magistrate OATES would be on duty so that BROWN could figure out what happened to the original complaint form against Dillion.[Document 1, Page 15].
25. On May 26, 2022, BROWN arrived at the Magistrate's Office to ask Magistrate OATES why Dillion had not been served or arrested yet in regards to the assault matter. BROWN asked to see the original complaint form, but OATES was unable to locate it. BROWN alleges that OATES seemed “panicked, uncomfortable, dismissive, and evasive.” BROWN alleges that OATES' tone was “high-pitched and hostile,” while BROWN remained “calm and polite.” OATES told BROWN to come back once OATES' shift ended and told BROWN that she needed to leave. [Document 1, Page 15].

26. On September 3rd, 2022, BROWN returned to the Magistrate's Office and "filled out another complaint form regarding the assault" by her abuser, and submitted it to on-duty Magistrate Jernigan. Magistrate Jernigan herself filled in the section that described the allegations of the suspect. [Document 1, Page 16]. Exhibit 2.
27. On October 2, 2022, BROWN returned to the Magistrate's Office to inquire again about the status of the assault case, and she was told that a warrant for ASSAULT ON A FEMALE had been served on Dillion. [Document 1, Page 16]. Exhibit 3.
28. On August 2, 2023, the ASSAULT ON A FEMALE case was disposed of because Dillion was deemed deceased. [Document 1, Page 16].